

BEFORE THE CRANE AND HOISTING
OPERATING ENGINEERS PROGRAM
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 24.135.501)	ON PROPOSED AMENDMENT
pertaining to hoisting operators)	AND ADOPTION
license requirements, ARM)	
24.135.516 pertaining to crane)	
hoisting operators license)	
requirements, ARM 24.135.530)	
pertaining to mine hoisting)	
operators license requirements,)	
and NEW RULES I-VI pertaining to)	
fee schedule, renewals, national)	
commission certification, failed)	
examinations, applications, and)	
citations and fines)	

TO: All Concerned Persons

1. On November 1, 2005, at 1:00 p.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Mr. Dan Bernhardt no later than 5:00 p.m., October 25, 2005, to advise us of the nature of the accommodation you need. Please contact Mr. Dan Bernhardt, Crane And Hoisting Operating Engineers Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2350; Montana Relay 1-800-253-4091; TDD (406) 444-2978; Facsimile (406) 841-2309; e-mail dlibsdcra@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.135.501 HOISTING OPERATORS LICENSE REQUIREMENTS

(1) through (3)(a) remain the same.

(b) have passed a physical examination within 180 days prior to a new application and present this report to the department, or present proof of passing an applicable physical examination-; and ~~A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical exam shall be presented to the department every second renewal date after the original licensure date, and may not be dated more than 180 days prior to the renewal date of the license.~~

(c) pass a written ~~or oral~~ examination as prescribed by the bureau.

(4) An applicant for a first-class hoisting operator's license shall have no less than ~~three years~~ one year of experience in the operation of hoisting equipment covered by this ~~section, rule, at a minimum of 1000 hours per year. or if~~ between one and three years of experience, the applicant must pass an actual performance test on the applicable hoisting equipment. This test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination. Applicants with less than one year of experience do not qualify for a first-class hoisting operator's license ~~as described above.~~ Applicants with work experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(a) through (a)(ii) remain the same.

(iii) single drum hoists with engines delivering unlimited brake horsepower; and

(iv) remains the same.

(5) An applicant for a second-class hoisting operator's license shall have no less than ~~two years~~¹ one year of experience in the operation of hoisting equipment covered by this ~~section, rule, at a minimum of 1000 hours per year. or if~~ between one and two years of experience, the applicant must pass an actual performance test on the applicable hoisting equipment. This test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination. Applicants with less than one year of experience do not qualify for a second-class hoisting operator's license ~~as described above.~~ Applicants with work experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(a) remains the same.

(i) elevators in buildings under construction with engines delivering up to 100 brake horsepower; and

(ii) through (7)(a) remain the same.

(b) A report of physical examination filled out and signed by the physician having given the examination. The form is provided by the bureau. An alternate form may be used if approved by the bureau. ~~This physical examination form must also be filled out and submitted for license renewals. The physical may not be dated more than 180 days from the date the application is received by the bureau.~~

(c) remains the same.

(d) The license fee provided by [NEW RULE I]. ~~One half of the license fee. The balance shall be paid upon issuance of the license. In the event the license is not issued, the one half fee will be forfeited. The fees for licensing are as follows:~~

~~(i) first class hoisting~~ ~~\$80;~~

- ~~(ii) second class hoisting 70;~~
- ~~(iii) renewals 40;~~
- ~~(A) The license must be renewed within 13 months of obtaining the previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedure as for a new license.~~
- ~~(iv) lost license replacement 10.~~
- (8) remains the same.

AUTH: 50-76-112, MCA

IMP: 50-76-102, 50-76-103, 50-76-104, MCA

REASON: For clarification purposes it is reasonable and necessary to amend ARM 24.135.501 because the enactment of Chapter 93, Laws of 2005 (HB 401) during the 2005 Legislative Session changed the experience requirements for a hoisting license to a one-year requirement. In addition, all renewal information is being located within one area of the rules for clarity and simplicity. Finally, there is reasonable necessity to amend the rule to organize all related fees in NEW RULE I (see below), to update the IMP citations, and to make several small formatting corrections while the rule is otherwise being amended.

24.135.516 CRANE HOISTING OPERATORS LICENSE REQUIREMENTS

- (1) through (1)(g) remain the same.
- (h) second-class tower crane-; and
- (i) air tugger.
- (3) and (3)(a) remain the same.
- (b) have passed a physical examination within 180 days prior to a new application and present this report to the department, or present proof of passing an applicable physical examination-; and ~~A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical examination shall be presented to the department every second renewal date after the original licensure date, and may not be dated more than 180 days prior to the renewal date of the license.~~
- (c) pass a written ~~or oral~~ examination as prescribed by the bureau.
- (4) An applicant for a first-class crane hoisting license, first-class crane hydraulic license, first-class tower crane license or a first-class gantry and trolley license shall have no less than three years one year of experience in the operation of crane hoist equipment covered by this rule, at a minimum of 1000 hours per year. ~~or if between one and three years of experience, the applicant must pass an actual performance test on the applicable equipment. This test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination.~~ Applicants with less than one year of experience

do not qualify for a first-class crane hoisting license ~~as described above~~. Applicants with work experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(a) through (d) remain the same.

(e) The holder of an air tugger winch license can operate all types of air tugger winches, other than air tugger winches on equipment used to drill oil, natural gas, or water wells.

(5) An applicant for a second-class crane hoisting license, second-class tower crane license or second-class hydraulic and boom truck license shall have no less than ~~two years~~ one year of experience in the operation of crane hoisting equipment covered by this rule, ~~at a minimum of 1000 hours per year. or if between one or two years of experience, the applicant must pass an actual performance test on the applicable crane hoisting equipment. This test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination.~~ Applicants with less than one year of experience do not qualify for second-class crane hoisting licenses ~~as described above~~. Applicants with work experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(a) The holder of a second-class crane hoist license can operate cranes with a manufacturer's load chart rating up to 15 17.5 tons, and 60 feet of boom, and hoists with engines delivering up to 100 brake horsepower, except mine hoists, or a tower crane of any capacity.

(b) The holder of a second-class hydraulic license can operate hydraulic cranes or boom trucks with a manufacturer's load chart rating up to 15 17.5 tons and 60 feet of boom.

(c) The holder of a second-class tower crane license can operate tower cranes up to ~~16~~ 17.5 tons and ~~60 feet of boom only.~~

(6) through (8)(c) remain the same.

(d) The license fee provided by [NEW RULE I]. ~~One half of the license fee. The balance shall be paid upon issuance of the license. In the event the license is not issued, the one half fee will be forfeited. The fees for licensing are as follows:~~

(i) first class crane hoisting	\$80,
(ii) second class crane hoisting	70,
(iii) third class crane hoisting	60,
(iv) renewals	40,

~~(A) The license must be renewed within 13 months of obtaining the previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedures as for a new license.~~

(v) lost license replacement	10-
---	----------------

(9) Crane hoisting operator's licenses need not be obtained to operate the following types of equipment:

(a) crane hoisting equipment that has a manufacturer's rating of six tons or less ~~or a boom length of 25 feet or less;~~

(b) remains the same.

(c) equipment with excavation attachments or log loading equipment; or

(d) remains the same.

AUTH: 50-76-112, MCA

IMP: 50-76-103, 50-76-104, MCA

REASON: For clarification purposes it is reasonable and necessary to amend ARM 24.135.516 due to statutory changes enacted in Chapter 93, Laws of 2005 (HB 401) during the 2005 Legislative Session. Statutory changes included the licensure of air tuggers, reducing experience to a one-year requirement, and increasing the tonnage for second class licensure to 17.5 tons. In addition, all renewal information is being located within one area of the program rules for clarity and simplicity. Finally, there is reasonable necessity to amend the rule to organize all related fees in NEW RULE I (see below), and to make several small formatting corrections while the rule is otherwise being amended.

24.135.530 MINE HOISTING OPERATORS LICENSE REQUIREMENTS

(1) through (3)(a) remain the same.

(b) have passed a physical examination within 180 days prior to a new application and present this report to the department, or present proof of passing an applicable physical examination; and ~~A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical examination shall be presented to the department every second renewal date after the original licensure date, and may not be dated more than 180 days prior to the renewal date of the license.~~

(c) pass a written ~~or oral~~ examination as prescribed by the bureau.

(4) An applicant for a first-class mine hoisting operator's license shall have no less than ~~three years~~ one year of experience in the operation of mine hoisting equipment, at a minimum of 1000 hours per year. ~~or if between one and three years of experience, the applicant must pass an actual performance test operating the applicable mine hoisting equipment. The test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination.~~ An applicant with less than one year of experience in the operation of mine hoisting equipment does not qualify for a mine hoisting operator's license ~~as described above.~~ Applicants with work experience acquired in states that have no licensing requirements will qualify if

their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(5) remains the same.

(6) An applicant for a second-class mine hoisting operator's license shall have no less than ~~two years~~ one year of experience in the operation of mine hoisting equipment covered by this ~~section~~, rule, at a minimum of 1000 hours per year. ~~or if between one and two years of experience, the applicant must pass an actual performance test operating the applicable mine hoisting equipment. The test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination.~~ Applicants with less than one year of experience do not qualify for a second-class mine hoisting operator's license. Applicants with experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(7) through (10)(a) remain the same.

(b) A report of physical examination filled out and signed by the physician having given the examination. The form is provided by the bureau upon request. An alternate form may be used if approved by the bureau. The physical may not be dated more than 180 days from the date the application is received by the bureau. ~~This physical examination form must also be filled out and submitted for license renewals.~~

(c) remains the same.

(d) The license fee provided by [NEW RULE I]. ~~One half of the license fee. The balance shall be paid upon issuance of the license. In the event the license is not issued, the one half fee will be forfeited. The fees for licensing are as follows:~~

(i) first class mine hoisting license	\$80,
(ii) second class mine hoisting license	70,
(iii) renewals	40,

~~(A) The license must be renewed within 13 months of obtaining the previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedures as for a new license.~~

(iv) lost license replacement	10.
--	----------------

AUTH: 50-76-112, MCA

IMP: 50-73-302, 50-76-102, 50-76-104, MCA

REASON: For clarification it is reasonable and necessary to amend ARM 24.135.530 because the statutory enactments in Chapter 93, Laws of 2005 (HB 401) during the 2005 Legislative Session that changed the experience requirements for mine hoisting license to a one-year requirement. In addition, all renewal information is being located within one area of the program rules for clarity and simplicity. Finally, there is reasonable necessity to amend the rule to organize all related

fees in NEW RULE I (see below), to update an IMP citation, and to make several small formatting corrections while the rule is otherwise being amended.

4. The proposed new rules provide as follows:

<u>NEW RULE I</u>	<u>FEE SCHEDULE</u>	(1)	Initial application, including examination:
(a)	First Class		\$100
(b)	Second Class		100
(c)	Third Class		60
(d)	NCCO reciprocity		80
(2)	Annual renewal of license (1st & 2nd Class)		80
(3)	Annual renewal of license (3rd Class)		50
(4)	Late renewal fee for each missed renewal cycle:		
(a)	First Class		80
(b)	Second Class		80
(c)	Third Class		50
(5)	Duplicate/Lost License		15
(6)	An applicant who fails the examination shall pay 50% of the licensure fee in order to retake the examination.		
(7)	All fees are nonrefundable.		

AUTH: 50-76-112, MCA

IMP: 50-76-104, MCA

REASON: For clarification purposes it is reasonable and necessary to create NEW RULE I to have all the program fees located in one area. Currently, fees are spread throughout the administrative rules pertaining to the crane program. It is also reasonable and necessary to amend the current fees because section 50-76-104, MCA, requires that license fees be set commensurate with program area costs.

The Department notes that the crane and hoist operator license program is currently operating at a deficit, and started the fiscal year with an interagency loan. Projected revenue for fiscal year 2006, using the existing fee structure is estimated at \$66,640, but expenditures of approximately \$105,640 are projected (including repayment of the loan). The proposed fee increases are designed to place the program back on a self-supporting financial foundation.

The department has reviewed the amount of work needed to process a new license application and administer an examination and concludes that the workload for processing each class of license application is not the same. The license application fee consists of three components: the application fee, the cost of administering the examination, and the license fee for the first year. The Department's cost for original licensing varies, depending on the type of grading. The Department therefore proposes to increase the license application and examination fee to \$100 for first and

second class crane and hoist operating licenses, and \$60 for third class oiler license. Annual renewal fees are proposed to be increased to \$80 for first and second class crane and hoist operating licenses, and \$50 for third class oiler.

Based on the number of persons licensed as crane and hoist operators in fiscal year 2005, the Department estimates that this rule will affect approximately 1,320 individuals who currently hold some class of crane and hoist operator licensure (including oiler licenses.) The Department estimates that the proposed fee increase for license renewal will generate approximately \$104,800 per year in revenue. Only a portion of that increase will be realized in fiscal year 2006, due to timing issues related to a staggered renewal system.

The Department estimates that approximately 178 individuals per year apply for a crane and hoist operator license. The Department estimates annual revenue from the proposed application fee increases for each license class as follows:

First Class license (102 applicants)	\$10,200
Second Class license (39 applicants)	3,900
Third Class license (37 applicants)	<u>2,220</u>
total application fees	\$16,320

The Department estimates that the total annual increase in application and renewal fees will be approximately \$54,480, and will affect approximately 1,498 individuals a year.

NEW RULE II RENEWALS (1) The license must be renewed within 12 months of obtaining the previous license.

(a) A license not renewed within 12 months will be lapsed for a period of 45 days. A licensee may legally work on a lapsed license for a period of 45 days. A lapsed license may be renewed within the 45 days by submitting the renewal form and applicable late fees.

(b) A lapsed license not renewed within 45 days will expire. A licensee is not considered to be working legally if the licensee's license has expired. An expired license may be renewed within two years by submitting the renewal form and applicable late fee.

(c) A license automatically terminates if it has not been renewed within two years. The terminated license may not be reinstated, and a new original license must be obtained by:

- (i) submitting a new application;
- (ii) meeting the current requirements;
- (iii) passing the examination; and
- (iv) paying the appropriate fees.

(2) A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical examination, shall be presented to the department every second renewal date after the original licensure date, and may not be

dated more than 180 days prior to the renewal date of the license.

AUTH: 50-76-112, MCA
IMP: 37-1-141, 50-76-103, MCA

REASON: For clarification purposes, it is reasonable and necessary to adopt NEW RULE II to have all renewal information located in one area, and to incorporate new renewal provisions pursuant to changes in statute by Chapter 467, Laws of 2005 (HB 182).

NEW RULE III NATIONAL COMMISSION CERTIFICATION

(1) Applicants for a first-class or second-class crane and hoist engineer's license may provide proof of certification by the national commission for the certification of crane operators.

(2) The bureau will issue a license by national commission certification to an applicant provided that the applicant:

(a) files a completed application with the required fees; and

(b) holds a current and valid certificate issued by the national commission for the certification of crane operators.

AUTH: 50-76-112, MCA
IMP: 50-76-113, MCA

REASON: For clarification purposes, it is reasonable and necessary to create NEW RULE III. Chapter 93, Laws of 2005 (HB 401) gave the department authority to allow licensure by credential recognition of applicants that have already obtained the National Commission for the Certification of Crane Operators.

NEW RULE IV FAILED EXAMINATIONS (1) Any applicant who sits for and fails the examination will not be allowed to retake the examination for a period of 45 days, commencing with the date of the last examination that the applicant failed.

AUTH: 50-76-112, MCA
IMP: 50-76-103, 50-76-108, MCA

REASON: For clarification purposes, it is reasonable and necessary to create NEW RULE IV. This new rule provides guidance for applicants who have failed the examination. Currently, the administrative rules only mention the need to pass written examination and do not explain the process if the applicant fails. NEW RULE IV implements section 50-76-108, MCA, by identifying the 45 day waiting period provided by section 50-74-312, MCA, relating to boiler operators.

NEW RULE V APPLICATIONS (1) Applications for crane licensure may be made by anyone professing the qualifications set forth in 50-76-103, MCA. The application for examination is made to the department, and must be accompanied with the proper fee.

(2) No application for examination will be considered unless it is accompanied by the proper duly documented supporting evidence.

(3) If an application is withdrawn, no refund of the application fee will be made.

(4) An application will be on file one year from the date of receipt. If no action is taken by the applicant within one year, the application fee will be forfeited and reapplication will be required.

AUTH: 50-76-112, MCA

IMP: 50-76-103, 50-76-104, MCA

REASON: For clarification purposes, it is reasonable and necessary to create NEW RULE V. Current application processes are spread throughout the administrative rules pertaining to the crane program, which has historically caused confusion for license applicants. NEW RULE V creates a central location for ease of accessibility.

NEW RULE VI CITATIONS AND FINES (1) Any person that has been issued a citation shall have the fine waived by the department if the following have been met:

(a) the person shall provide proof of licensure to the department within 30 days of the citation being issued; and

(b) such proof of licensure indicates that the person held a valid license issued by the department at the time of the violation.

AUTH: 50-76-112, MCA

IMP: 50-76-102, 50-76-103, 50-76-114, MCA

REASON: For clarification purposes, it is reasonable and necessary to create NEW RULE VI to implement certain provisions of Chapter 93, Laws of 2005 (HB 401), which gave the department the authority to issue citations and fines for unlicensed practice. Additionally, HB 401 gave the department the authority to waive the fine. This new rule provides guidance to the process of requesting that the department waive the fine.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to: Mr. Dan Bernhardt, Crane and Hoisting Operating Engineers Program, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdcr@mt.gov and must be received no later than 5:00 p.m., November 9, 2005.

6. An electronic copy of this Notice of Public Hearing is available through the Department and Program's web site on the World Wide Web at <http://craneoperator.mt.gov>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Crane and Hoisting Operating Engineers Program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Program. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Crane Program administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Crane Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdcra@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor requirements of 2-4-302, MCA, apply and have been fulfilled.

9. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

DEPARTMENT OF LABOR AND INDUSTRY
CRANE AND HOISTING OPERATING
ENGINEERS PROGRAM

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

Certified to the Secretary of State September 26, 2005